

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Wisconsin Department of Transportation for a Determination of the Adequacy of Warning Devices at the Public Crossing of the Wisconsin & Southern Railroad Co. Tracks with Milwaukee Street in the City of Plymouth, Sheboygan County

On the Commissioner's Own Motion for the Investigation of the Closure of the Public Crossing of the Wisconsin & Southern Railroad, LLC Tracks with Milwaukee Street in the City of Plymouth, Sheboygan County

9170-RX-305

PROPOSED FINAL DECISION

On June 13, 2014, the Wisconsin Department of Transportation (WisDOT) filed a petition with the Office of the Commissioner of Railroads (Office) for a determination pursuant to Wis. Stat. § 195.28 of the adequacy of warning devices at the grade crossing of the Wisconsin & Southern Railroad, LLC (WSOR) tracks with Milwaukee Street in the City of Plymouth, Sheboygan County (Crossing No. 387094Y / MP 139.51). ([PSC REF#: 209966](#)) The WisDOT sought to upgrade the crossing warning devices in conjunction with a roadway reconstruction project.

Subsequent to WisDOT's petition, the Commissioner,¹ under Wis. Stat. §§ 195.03(2), 195.28 and 195.29, directed the Office staff to investigate and conduct a hearing regarding the potential closure of the Milwaukee Street crossing as an alternative to upgrading the warning devices. The closure of a crossing means that the roadway is terminated at the tracks and permanently closed to public travel.

This matter was originally set for hearing on September 3, 2014. The hearing was postponed indefinitely when the city indicated it was beginning the process to vacate Milwaukee Street at the crossing. The city of Plymouth common council later voted not to vacate the street. ([PSC REF#: 285847](#))

¹ Jeff Plale served as the Commissioner of Railroads from August 2011 to January 2016.

Pursuant to due notice, a public hearing was held in this matter on March 18, 2015 in Plymouth, Wisconsin, before Administrative Law Judge Douglas S. Wood. The list of parties and interested persons appears at Appendix A.

Douglas Wood retired before issuing a written Proposed Final Decision. Administrative Law Judge David Albino was then assigned to review the record and draft a proposed decision. Having considered all the evidence in the record, the Administrative Law Judge recommends that the Milwaukee Street crossing be CLOSED.

Findings of Fact

1. Milwaukee Street, city of Plymouth, Sheboygan County, runs north and south in the area of the crossing and is about 36 feet wide with a rural cross-section.
2. Milwaukee Street crosses the WSOR tracks at an angle of about 30 degrees left hand forward (LHF) skew.
3. A sidewalk extending from E. Main Street in an east-west direction and crossing the tracks immediately adjacent to Milwaukee Street is in poor condition with very little use. There exists a crossbuck and an 8-inch flashing light signal on the westbound approach of the sidewalk on Main Street.
4. Milwaukee Street has a slight westward displacement south of the crossing and its intersection with Main Street of 10 feet, resulting in southbound traffic facing the oncoming northbound traffic.
5. Western Avenue has a very steep ascending grade from the south of approximately 13 percent. The grade is level from the north.

6. The crossing consists of two tracks -- the north track is operational, and the south track is unused and disconnected. The distance from the stop bar to the track centerline is 34 feet.
7. It is reasonable for WSOR to remove the unused tracks at the crossing.
8. The railroad currently operates one to two through train movements per week over the Milwaukee Street crossing at a speed of 10 miles per hour (mph). This section of track is also being used as head room for longer trains to clear the switch located approximately 800 feet to the south of the crossing.
9. Warning devices for the Milwaukee Street crossing consist of one 8-inch flashing light signal on the southbound approach, one wig-wag signal for the northbound approach, and one wig-wag for facing the approach of Main Street. The cost to replace the archaic wig-wag signals at Milwaukee Street is estimated at \$225,000.
10. There is one stop sign on southbound Milwaukee Street for the intersection of Main and Western Avenues. When a vehicle is stopped at the stop sign, the track is fouled.
11. Milwaukee Street carries an estimated 2400 average daily traffic (ADT). The posted speed limit is 25 mph.
12. The approach sight distance is adequate.
13. The corner sight distance available from the safe stopping distance is inadequate in the northeast and southeast quadrants due to obstructions by buildings and trees.
14. Clearing sight distance in the northwest quadrant is hindered by the left hand forward skew of the crossing.
15. There has been one accident reported at this crossing in 1974 and involved no injuries.

16. The closure of the crossing at-grade of the WSOR tracks with Milwaukee Street in the city of Plymouth, Sheboygan will promote public safety.

17. It is reasonable for the WSOR to pay 100 percent of the cost to remove the crossing, remove the roadway approaches to the crossing within its right-of-way, install and maintain the temporary Type III barricades, and to remove the unused railroad tracks on the south side of the crossing.

18. It is reasonable for the Wisconsin & Southern Railroad, LLC to pay 90 percent and the city of Plymouth to pay 10 percent of the cost to design and construct the vehicle turnarounds, including any necessary real estate costs.

19. It is reasonable for the city of Plymouth to bear 100 percent of the cost to install and maintain the permanent barricades and necessary roadway signage and to maintain the vehicular turnarounds.

Conclusions of Law

1. The Wisconsin & Southern Railroad, LLC is a railroad as defined in Wis. Stat. § 195.02(1).

2. The Office has authority under Wis. Stat. §§ 189.02, 195.03, 195.04, 195.06, 195.28, 195.285, 195.29, 195.30, Wis. Stat. § 227.47(1), and Wis. Admin. Code §§ RR 1.15, to issue this final decision.

Analysis

Milwaukee Street At-Grade Public Crossing No. 387094Y / MP 139.51

Milwaukee Street is located in the city of Plymouth, Sheboygan County. It runs north and south in the area of the crossing and is about 36 feet wide with a rural cross-section. Milwaukee Street carries

STH 67. However, STH 67 avoids the Milwaukee Street crossing by diverting east on Elizabeth Street one block prior to the crossing, then south on Caroline Street to Mill Street, where STH 67 heads west back to Milwaukee Street. South of the crossing, Milwaukee Street also carries CTH C. Milwaukee Street crosses the WSOR tracks at an angle of about 30 degrees left hand forward (LHF) skew.

There is also a sidewalk extending from E. Main Street in an east-west direction and crossing the tracks immediately adjacent to Milwaukee Street. The sidewalk is in poor condition with very little use. There exists a crossbuck and light at the sidewalk crossing.

The roadway in the immediate vicinity of the crossing has a very steep ascending grade from the south of approximately 13 percent. The grade is level from the north. The crossing consists of two tracks -- the north track is operational, and the south track is unused and disconnected.² The distance from the stop bar to the track centerline is 34 feet. Although Milwaukee Street runs north-south, the roadway has a slight westward displacement of 10 feet south of the crossing and its intersection with Main Street. This results in southbound traffic facing the oncoming northbound traffic lane and confusion as to whether northbound traffic will continue straight on Milwaukee Street, or follow Western Avenue to the northwest.

The railroad currently operates one to two through train movements per week over the Milwaukee Street crossing at a speed of 10 miles per hour (mph). This section of track is also being used as head room for longer trains to clear the switch located approximately 800 feet to the south of the crossing.

Warning devices for the Milwaukee Street crossing consist of one 8-inch flashing light signal on the southbound approach, one wig-wag signal for the northbound approach, and one wig-wag for facing

² It appears that the track is disconnected and removed north and south of the crossing. However, the rails at the crossing itself remain in place.

the approach of Main Street. There is also an 8-inch flashing light signal on the westbound approach of the sidewalk on Main Street. The adjacent crossing of Elizabeth Street also has warning devices consisting of one 8-inch flashing light signal, and one wig-wag. Wigwags are archaic warning devices with replacement parts either unavailable or difficult to find. There is one stop sign on southbound Milwaukee Street for the intersection of Main and Western Avenues. When a vehicle is stopped at the stop sign, the track is fouled.³ There is also a single 8-inch flashing light signal at the sidewalk for Main Street. The cost to replace the archaic signals at Milwaukee Street is estimated at \$225,000.

Milwaukee Street carries an estimated 2400 average daily traffic (ADT). The speed limit is posted 25 mph. A driver traveling at 25 mph needs a distance of 187 feet to stop safely. The crossing warning devices are visible from more than 187 feet in each direction. The approach sight distance is adequate.

Corner sight distance is the distance down the track that a motorist must see the approaching train in order to stop safely. Assuming a train speed of 10 mph, in order to have adequate corner sight distance a driver traveling at 25 mph needs to see a train when it is 100 feet from the crossing from a point 187 feet down the highway. The actual sight distances are: 60 feet in the northeast quadrant; 180 feet in the northwest quadrant; 120 feet in the southwest quadrant; and, 50 feet in the southeast quadrant. The corner sight distance available from the safe stopping distance is inadequate in the northeast and southeast quadrants. The view down the tracks of approaching trains is obstructed in the northeast and southeast quadrants by buildings and trees.

At all crossings, except those with gates, a driver stopped 15 feet short of the near rail must be able to see far enough down the track, in both directions, to determine if sufficient time exists for

³ Fouling a track means the placement of an individual in such proximity to a track that the individual could be struck by a moving train or other on-track equipment, or in any case is within four feet of the nearest rail. 49 C.F.R. § 220.5.

moving their vehicle safely across the tracks to a point 15 feet past the far rail, prior to the arrival of a train. Required clearing sight distance along both directions of the track, from the stopped position of the vehicle, is dependent upon the maximum train speed and the acceleration characteristics of the “design” vehicle (assumes intermediate semi-trailer, WB-50)⁴. The necessary clearing sight distance at the Milwaukee Street crossing is 225 feet. The actual clearing sight distance is less than 225 feet in three of the four quadrants. Clearing sight distance in the northwest quadrant is hindered by the left hand forward skew of the crossing.

There has been one accident reported at this crossing in 1974 and involved no injuries.

WisDOT Proposal

WisDOT proposes the upgrade to include gated signals with 12-inch LED lamp units and an electronic bell and bungalow with constant warning time circuitry. WisDOT recommends that the southbound signal consist of mast mounted gated automatic signals and that the northbound signal include a cantilevered installation with sidelights directed toward southeasterly Western Avenue traffic and easterly Main Street traffic. To avoid blocking vehicles turning off of northerly North Milwaukee Street to northwesterly Western Avenue, WisDOT recommends that the northbound gated signal be installed nearly parallel to the track using a 30 foot gate. ([PSC REF#: 209966](#)) During construction, the existing pedestrian crossing presently located in the south east quadrant will be relocated so as to run parallel to North Milwaukee Street and close enough to the upgraded south signal such that the existing separate pedestrian signal may be eliminated. The signal support posts would be installed at the standard location of 4 feet, 3 inches behind the faces of curbs.

⁴ The design characteristics of a WB-50 are 13.5 feet in height, 8.5 feet in width, and 55 feet in length. A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS AND STREETS, (Washington, D.C., AASHTO, 2011) (AASHTO Design Guide), at 17.

A WisDOT witness testified that WisDOT's first recommendation was closure. However, road improvements and warning devices could be upward of \$225,000. WisDOT would need to remove the berm blocking vision at the end of Main Street. However, the grade (steep ascending grade from the south of approximately 13 percent) cannot be corrected without putting in some other crossing.

City of Plymouth's Position

The City of Plymouth reviewed the crossing, including the potential of voluntarily vacating the street. The city held a public hearing on November 11, 2014, regarding the crossing. The common council voted 8-0 not to proceed with vacating North Milwaukee Street at the WSOR crossing. Some of the reasons from the general public and common council for voting to leave the crossing open include:

1. No documented crash history to warrant the closing of the crossing for safety reasons.
2. The preferred route of Orange Cross, previously Plymouth Ambulance Association, to go north is across the rail crossing.
3. Sartori Cheese requires adequate access between two facilities and that access would be negatively impacted if the street was vacated.
4. The trains on the crossing are in "Yard Limit" speeds of four (4) miles per hour and represent a low risk for accidents.
5. The corridor and crossing is the only north/south route through the city of Plymouth near downtown.
6. Truck traffic turning at Mill Street and Caroline Street (STH 67) route cannot make a turn without encroaching into oncoming traffic, which, presents potential safety concerns as a result of a crossing closure.

The city correctly notes that there is no crash history at the crossing to warrant the closing of the crossing for safety reasons. One of the city's witnesses testified that there were seven at grade crossings in the city, with Milwaukee Street being the busiest at 2400 average daily traffic that bypasses the route suggested for STH 67.

The city witness states that trucks will not use Elizabeth Street because of the sharp angle. Western Avenue meets Elizabeth Street at a right-hand forward skew. The city witness also stated that the official high-wide load (oversize/overweight) corridor is through the Milwaukee Street crossing.

Although one reason for keeping the crossing open is that Sartori Cheese requires adequate access between its two facilities, this reason was not further developed at the hearing.

WSOR's Position

The railroad supports closure stating that the crossing was not designed with safety in mind. The railroad states that there is a potential for new customers, including Union Pacific interchange traffic of one-two trains per week. The line currently has two-four trains per week but increased business could increase the frequency and length of trains. There are now 5-20 cars through the crossing with a potential 300-400 cars per year increase.

Alternate Routes

Reasonable and adequate access to and from the area served by the Milwaukee Street crossing can be maintained even if the Milwaukee Street crossing is closed. There are reasonable alternate routes to the Milwaukee Street crossing. Two streets intersect with Milwaukee Street, parallel to W Main Street—Elizabeth Street one block north of W Main Street, and E Mill Street one block south of W Main Street. These parallel roadways each have a public crossing that will allow motorists who

currently use the Milwaukee Street crossing to reach their destination with minimal additional travel time and distance.

The Elizabeth Street at-grade public crossing No. 387093S is adequate and provides a primary access in and out of this area. The Elizabeth Street crossing is 448 feet northwest of the Milwaukee Street crossing, measured along the tracks. A driver using Western Avenue to/from the Elizabeth Street crossing would travel an additional 600 feet, or approximately 20 seconds additional time, to/from Milwaukee Street.

The E Mill Street grade-separated public crossing No. 387096M is 525 feet southeast of the Milwaukee Street crossing, measured along the tracks. The grade-separation bridge has a posted clearance of 14 feet, 6 inches above the roadway. The clearance will accommodate most types of commercial trucks. If the Milwaukee Street crossing is closed, secondary access routes will still be available at the Mill Street crossing in the event the Elizabeth Street crossing is blocked by a train or is otherwise inaccessible.

STH 67 runs one block east of Milwaukee Street on Caroline Street, bypassing the crossing. The distance from Elizabeth Street to Mill Street is 850 feet; Milwaukee Street to Caroline Street is 350 feet. This is shown to be an adequate alternate route for traffic on Milwaukee Street, adding only two blocks for a total of 1,550 feet. This route adds an additional 700 feet. Another alternate route would be to use Western Avenue and Elizabeth Street. The distance from Main Street to Elizabeth Street is 440 feet. The alternate route is 950 feet, for an increase of 510 feet. The turn angle from Western Avenue to Elizabeth Street is 40 degrees, so a curb radius improvement would aid in this turn. Motorists, and particularly emergency vehicles, would have minimal delays by the closure of Milwaukee Street.

Parallel to, and immediately south of Main Street, Thayer Street intersects with the WSOR mainline track just 725 feet south of the Milwaukee Street crossing, measured along the tracks. This at-grade crossing (No. 387097U) is 560 feet east of the intersection of Thayer and Milwaukee Streets.

There is yet another crossing (No. 387092K) at Grove Street, 2,050 feet north of the Elizabeth Street crossing, measured along the tracks. Traffic using the Grove Street crossing could travel along Western Avenue, Sunset Drive and Grove Street, a total of 5,044 feet, to Milwaukee Street. The intersection of Grove and Milwaukee streets is 2,965 feet north of the Milwaukee Street crossing. If the Milwaukee Street crossing is closed, a driver using the Grove Street crossing would only need to travel an additional 2,079 feet. A driver traveling at the posted speed limit of 25 mph would add between one and two minutes to the travel time and encounter no signalized intersections. All turns using this route to get to Milwaukee Street are right-hand turns.

Emergency Services

Orange Cross Ambulance is the primary emergency medical services (EMS) for the city and town of Plymouth. Orange Cross is located south of the Milwaukee Street crossing on S Milwaukee Street. The preferred route of Orange Cross to go north is across the rail crossing. It is however, not the only available route. To travel one block north of the Milwaukee Street crossing, Orange Cross could utilize the Mill Street grade-separated crossing. Traveling north on Milwaukee Street from the intersection with Mill Street (one block south of the crossing) to the intersection with Elizabeth Street (one block north of the crossing) a driver covers approximately 878 feet. To reach the same intersection of Milwaukee with Elizabeth Street using the Mill Street crossing and Caroline Street, a driver would travel 1,570 feet – or an extra 692 feet of travel.

The Plymouth Fire Department also maintains an ambulance service. The Fire Department is located on E Main Street, one block west of the closed crossing at Main Street and 0.6 miles north of Orange Cross. Because of the closure of the crossing at Main Street, the Fire Department already cannot use the Milwaukee Street crossing but must travel north or south on Caroline Street to reach Milwaukee Street.

No evidence is presented that closing the Milwaukee Street crossing would have a material impact on delivery of emergency fire or medical services.

Discussion

There are arguments in favor of and against closing the Milwaukee Street crossing. Savings are generated because the cost of installation and maintenance associated with warning devices, crossing surfaces, and sight distance clearance is eliminated. These funds can be used to improve alternate routes, resulting in greater transportation efficiency and safety. The closing improves railroad and highway safety by having fewer intersections where collisions between motor vehicles and trains can occur. The lack of accidents since 1974 is more a factor of the low volume of train movement than the design of the intersection and crossing. However, train traffic is changing. There is a strong likelihood that train operations will be increasing. Closing the crossing will reduce the potential of train-vehicle accidents.

This accident potential is exacerbated by the severe left hand forward skew that makes it difficult to physically see an approaching train when a driver is attempting a right turn from Milwaukee Street unto Western Avenue. There is a steep grade of 13 percent on the northbound approach of Main and Western Avenues, which, cannot be corrected without putting in some other crossing. A berm at end of

Main Street blocks vision. Southbound cars stopped at the stop sign end up fouling the tracks. The closing removes a number of potential safety hazards at a cost that is only a fraction of the cost of new warning signals and gates.

Of the seven crossings in the city, six are in a stretch of rail less than one mile long. The crossings fall partially within the criteria identified in the RAILROAD-HIGHWAY GRADE CROSSING HANDBOOK - REVISED SECOND EDITION AUGUST 2007 (FHWA-SA-07-010) (hereafter, Handbook),⁵ to wit, more than four crossings per mile.⁶

The continued existence of many crossings in such a short distance, when reasonably adequate alternate routes are available, unreasonably imposes ongoing costs on the railroad. Railroads bear a statutory duty to maintain at-grade crossings in suitable condition for public travel at their own cost. See Wis. Stat. § 86.12. Railroads also pay at least 50 percent of the cost to maintain crossing warning devices (labor and materials).⁷ The railroad should not have to continue to bear these not insubstantial costs unless the crossings are necessary for public convenience.

The speed of trains and the inadequate corner and clearing sight distances make this crossing dangerous for public use. Closing the crossing will improve public safety. Given the availability of alternate routes, Milwaukee Street is a redundant crossing. Eliminating a redundant crossing serves the public interest.

Taken together, Caroline and Western Avenues, along with Elizabeth, Mill, Thayer, and Grove Streets provide a transportation network that gives motorists multiple options to travel in any direction through, across, and within the area. The availability of parallel connecting streets is a key point of

⁵ Available at http://safety.fhwa.dot.gov/xings/com_roaduser/07010/.

⁶ Other considerations include three crossings with fewer than 2,000 vehicles per day, and more than two trains per day.

⁷ In practice, railroads pay about 75 percent of the maintenance costs for warning devices.

analysis in determining whether a crossing is redundant, and thus can be closed without undue public convenience. Parallel connecting streets allow traffic that uses an existing crossing to conveniently divert to another route with little or no added travel distance if that crossing is closed.

The increased travel time caused by the closure of Milwaukee Street will be minimal. Closing Milwaukee Street at the tracks will improve public safety

The city suggests that Sartori Cheese requires adequate access between its two facilities and that such access would be negatively impacted if the street was vacated. The record contains no evidence of what is meant by ‘adequate access’ nor the kind or extent of the negative impact.

The city states that truck traffic turning at Mill Street and then at Caroline Street cannot make the turn without encroaching into oncoming traffic, a potential safety concern. However, Caroline Street, between Mill and Elizabeth streets, is already part of STH 67. STH 67, from CTH B south of St. Cloud to USH 151 north of Kiel, is a designated long truck route pursuant to Wis. Admin. Code § Trans. 276.07. Any potential safety concerns appear to have been considered in designating part of Caroline Street as STH 67, officially bypassing the Milwaukee Street crossing.

However, some encroaching is always expected on local streets. Allowing trucks to sometimes use the whole intersection allows the entire intersection to become more compact, reducing turning speeds to 12–15 mph. Trucks traveling at slower speeds have more flexibility and can make difficult turns that may be challenging or unsafe at higher speeds.

Contrary to the STH 67 bypass of the Milwaukee Street crossing, the city suggests that the crossing is part of the official high-wide load (oversize/overweight (OSOW)) corridor. According to WisDOT’s FACILITIES DEVELOPMENT MANUAL, of which, the administrative law judge takes official notice under Wis. Stat. § 227.45, there are three categories of truck routes on the STH:

1. “Designated Long Truck Routes” (no overall length limitation; MAX 53 foot trailer w/ 43 feet king pin to rear axle; MAX 28 foot-6 inch trailers on double bottoms).
2. “75-foot Restricted Truck Routes” (75-ft overall length limitation; MAX 53 foot trailer, 43 feet king pin to rear axle; no double bottoms).
3. “65-foot Restricted Truck Routes” (65-ft overall length limitation; MAX 48 foot trailer, no double bottoms).

FACILITIES DEVELOPMENT MANUAL (March 14, 2016), § 11-25, at pp. 12-13. If a STH is not listed as either a “Designated Long Truck Route” or a “65-foot Restricted Truck Route” then it is a “75-foot Restricted Truck Route”. The “Wisconsin truck operator map” includes these identified routes and is available at <http://wisconsindot.gov/Pages/dmv/com-drv-vehs/mtr-car-trkr/truck-routes.aspx>. ID. In addition to the Long Truck Route Maps, WisDOT has established a statewide OSOW Freight Network (FN). All roads on the FN are on “Designated Long Truck Routes”, with the exception of a few roadways that may be an origination point or a recurring destination point, such as a manufacturing plant or a gravel pit. ID. The Milwaukee Street crossing is not on the OSOW FN.

It is my opinion that the Wisconsin & Southern Railroad LLC crossing with Milwaukee Street in the city of Plymouth should be closed. Milwaukee Street at the intersection with Main Street is a substandard road considering both the horizontal and vertical alignment. There are adequate alternate safe routes. Vehicles, when stopped at the stop bar at the crossing, will be within the track zone. There would be minimal negative effect on motorists' drive time, as well as emergency vehicle response time. Milwaukee Street is a redundant crossing, and can safely be eliminated. The cost to replace the signals for a redundant crossing is not justified.

The sidewalk extension of Main Street is similarly unnecessary, and should also be closed, and the signal removed. The sidewalk is in poor condition with very little use. However, it does not appear that the parties were properly on notice of the possible closing of this 'pedestrian crossing'. Notwithstanding the decision herein to recommend closing the Milwaukee Street crossing to vehicular traffic, it is reasonable to allow the parties to propose a way forward in terms of the pedestrian crossing.

There is also an old Chicago and North Western Transportation Company rail line not used since the 1970s. The tracks have been removed north and south of the crossing but not at the crossing itself. It is extremely unlikely that the unused line would be used again in the future. WSOR shall remove the tracks.

End-of-Road Treatment

The Wisconsin & Southern Railroad, LLC shall install a Type III barricade with a Milwaukee Street CLOSED sign on each approach to the tracks by August 31, 2016. The railroad shall remove the crossing and obliterate the roadway within its right-of-way only after the Type III barricades and signage are in place. The WSOR shall remove the crossing and approaches no later than October 31, 2016. The WSOR shall provide written notice to the city of Plymouth before removing the crossing.

The temporary barricades shall remain in place until the city of Plymouth installs a permanent steel beam guard barricade with three end-of-roadway markers on each approach to the former crossing. The city of Plymouth shall install the beam guard barricades, end-of-roadway markers, and Milwaukee Street CLOSED signs no later than August 31, 2016. The city of Plymouth shall permanently maintain those signs, markers, and barricades.

In addition, the city of Plymouth shall remove the roadway up to the parallel roads on their respective sides of the crossing. The goal is to thoroughly remove any sign of the roadway so that a driver on the parallel roadway will not be able to tell that there was once a roadway at that location.

The DOT standard specifications for “obliterating old road” are attached as guidance.

(AVAILABLE IN DOCKET 9040-RX-1264)

A place for vehicles to turn around is only necessary on the north side of the tracks after the crossing is closed. The order requires the city of Plymouth to construct and maintain a vehicle turnaround area on the southbound approach to the existing Milwaukee Street crossing. The city of Plymouth may construct any non-cul de sac turnaround design consistent with the AASHTO’s Design Guide. Specifically, the Commissioner approves L-type, T-type, Y-type or I Branch turnarounds as shown in AASHTO. These turnaround designs are adequate for the low volume of traffic that would be on Milwaukee Street after the crossing is closed.

The order *authorizes* the city of Plymouth to construct and maintain a full cul de sac on the southbound approach to the Milwaukee Street crossing. A full cul de sac is warranted by the needs of school buses, snow plows, fire trucks, and other large vehicles to easily turn around. However, the OFFICE will allow the local unit of government to determine whether a non-cul de sac turnaround design will adequately serve local needs. Any vehicular turnaround shall be designed in a manner consistent with the AASHTO’s Design Guide.

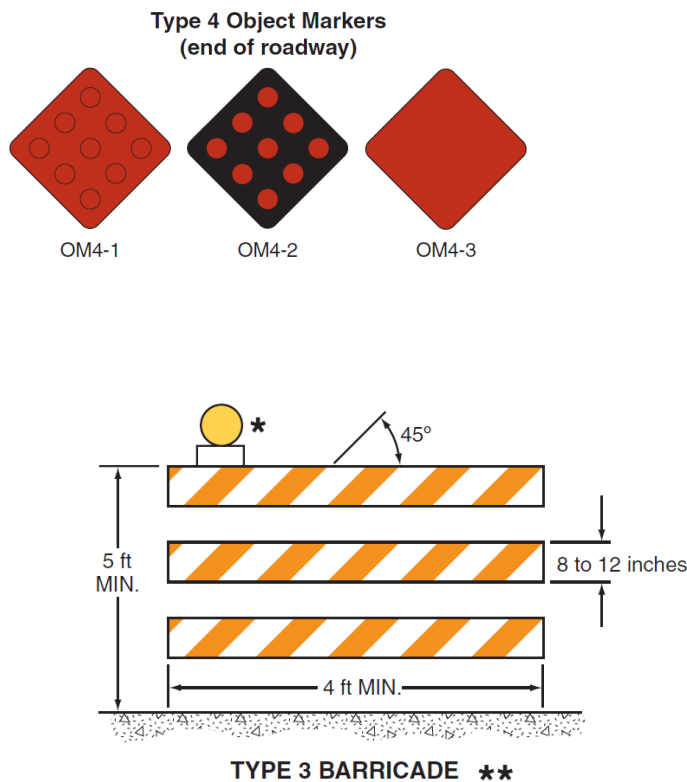
All barricades and signage shall conform to the federal and Wisconsin Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD is available at http://mutcd.fhwa.dot.gov/kno_2009r1r2.htm.

Type III barricades are described in Sections [2B.67](#) and [6F.68](#) and shown [Figure 6F-7](#) of the MUTCD.

9170-RX-305

End-of-Roadway markers are described Section [2C.66](#) and shown Figure [2C-13](#), Object Markers and End-of-Roadway Markers, Signs OM4-1 or OM4-3.

Milwaukee Street CLOSED signs are described in [Section 2B.58](#), sign R11-2 and shown in Figure [2B-29](#).



Costs

Consistent with prior OFFICE practice, the order requires the WSOR to bear 100 percent of the cost to remove the crossings and the roadway approaches within its right-of-way and to install and maintain temporary barricades, and 90 percent of the cost to construct the vehicle turnarounds (including any real estate costs). The city of Plymouth shall bear the cost to install and maintain the permanent beam guard barricades, to install and maintain signage and to maintain the vehicle turnarounds.

Based on prior experience of the OFFICE, this apportionment of costs will require the Wisconsin & Southern Railroad, LLC to bear about 90 percent and the city of Plymouth about 10 percent of the total costs necessary to accomplish the closure of the crossing. The city of Plymouth will bear maintenance costs for roadway signage and the roadway surface consistent with its standard maintenance duties for any local road and road signage. The city of Plymouth will design and construct the cul de sacs. Splitting the costs of the vehicular turnaround provides an incentive to the local government to control costs that would be absent if the WSOR paid all while the city of Plymouth paid none of the turnaround costs.

Order

1. The **WSOR** shall install and maintain temporary Type III barricades, Milwaukee Street CLOSED sign (R11-2 in the MUTCD), Advance Road Closed warning sign with the secondary legend AHEAD at the crossing at-grade of **Milwaukee Street** with its tracks in the city of Plymouth, Sheboygan by **August 31, 2016** (Crossing No. 387094Y).
2. The **city of Plymouth** shall install and maintain Milwaukee Street CLOSED signs (R11-2 in the MUTCD), Advance Road Closed warning signs with the secondary legend AHEAD on the approaches to the crossing at-grade of **Milwaukee Street** with its tracks in the city of Plymouth, Sheboygan by **August 31, 2016** (Crossing No. 387094Y).
3. The **WSOR** shall remove the crossing surface and obliterate the roadway approaches within its right-of-way for the crossing at-grade of **Milwaukee Street** with their tracks in the city of Plymouth, Sheboygan **after August 31, 2016 and before October 31, 2016** (Crossing No. 387094Y). The **WSOR** shall not remove the crossing surface or approaches until the Type III barricades required in paragraph 1, above, are installed.

4. The **WSOR** shall completely remove the unused tracks of the old Chicago and North Western Transportation Company when obliterating the roadway approaches within its right-of-way for the crossing at-grade of **Milwaukee Street** with their tracks in the city of Plymouth, Sheboygan **after August 31, 2016 and before October 31, 2016** (Crossing No. 387094Y). The **WSOR** shall not remove the unused tracks until the Type III barricades required in paragraph 1, above, are installed.

5. The **WSOR** shall remove the signaling equipment.

6. The **WSOR** must install “No Trespassing” signs along its right-of-way in all four quadrants of the Milwaukee Street crossing.

7. The **city of Plymouth** shall install and maintain L-type, T-type, Y-type or I Branch turnarounds at or near the termini of **Milwaukee Street** consistent with AASHTO’s Design Guide, **no later than November 30, 2016**.

8. In addition to the signage required in paragraph 2, above, the **city of Plymouth** shall install and maintain the following barricades, signs and markers on each approach to the **Milwaukee Street** crossing at-grade by **August 31, 2016**:

- a. ROAD CLOSED sign (R11-2 in the MUTCD);
- b. Steel beam guard barricade with reflective red and white stripes; and
- c. At least three end-of-roadway markers (Figure 2C-13, Type 4 Object Markers).

9. The **WSOR** shall coordinate with the **city of Plymouth**, to develop a joint written plan and schedule for completing the work ordered herein by **July 31, 2016**. The joint written plan shall also be submitted to the Commissioner of Railroads using the Electronic Regulatory Filing System.

10. Within 30 days after completion of the work under ordered herein, the **WSOR** shall notify the Federal Railroad Administration of the closure of the crossing by initiating a United States Department of Transportation Crossing Inventory Form FRA F 6180.71.

11. Upon completion of all aspects of the closure authorized herein (e.g., the removal of signals and crossing surface, installation of signage and guard rail on the roadway), the **WSOR** and the **city of Plymouth** must jointly notify the Commissioner of Railroads using the Electronic Regulatory Filing System.

12. After the crossing is closed, the **WSOR** and **city of Plymouth** must report to the Commissioner of Railroads any incidents of pedestrians trespassing over the closed crossing or other safety-related events at or near the Milwaukee Street crossing every 90-days for a period of one year. These periodic reports will enable monitoring of any potential safety issues, including pedestrian trespass problems. If safety concerns arise as a result of the monitoring, the **WSOR**, the **city of Plymouth**, and the Commissioner of Railroads will work collaboratively to address the issues.

13. The **WSOR** shall bear 100 percent of the cost, including labor and materials, to:

- a. Install and maintain the temporary Type III barricades and signage;
- b. Install the Advance Road Closed warning sign with the secondary legend AHEAD;
- c. Install the permanent beam guard barrier with end of road markers;
- d. Remove the crossing; and,
- e. Obliterate the roadway within its right-of-way at the **Milwaukee Street** crossing.

14. The **city of Plymouth** shall bear 100 percent of the cost, including labor and materials, to install and maintain:

- a. Permanent beam guard barricades with end-of-road markers;

- b. Install the Milwaukee Street CLOSED signs (R11-2 in the MUTCD)
- c. Advance Road Closed warning signs with the secondary legend AHEAD; and
- d. Milwaukee Street CLOSED signs (R11-2 in the MUTCD)

15. The **WSOR** shall pay 90 percent, and the **city of Plymouth** shall pay 10 percent of the cost to design and construct the vehicle turnarounds, including any necessary real estate costs. The **WSOR** shall reimburse the city of Plymouth for such costs within ninety (90) days of receipt of final bills.

16. The **city of Plymouth** shall bear 100 percent of the cost, including labor and materials, to maintain the vehicular turnarounds.

17. Notwithstanding any other cost apportionment set forth in this order, the **WSOR** shall bear any cost assessed to the railroad pursuant to Wis. Stat. § 195.60 for the investigation of this matter by the Office and shall not pass on those assessment costs either directly or indirectly.

18. Jurisdiction is retained.

By the Office of the Commissioner of Railroads.



David Albino
Administrative Law Judge

DA:jg:DL: 00983290

See Attached Notice of Rights

Parties
Appearances:

In Support of Closure:

Wisconsin & Southern Railroad, LLC
by
Brian D. Baird, Attorney
Borgelt, Powell, Peterson & Frauen, S.C.
735 N Water St
Milwaukee, WI 53202

As Interest May Appear:

City of Plymouth
by
Brian Yerges
City Administrator/Utilities Manager
128 Smith Street
Plymouth, WI 53073

Wisconsin Department of Transportation, Petitioner
by
Lisa Stern, PE
Grade Crossing Safety Engineer
PO Box 7914
Madison, WI 53707-7914

OFFICE OF THE COMMISSIONER OF RAILROADS
610 North Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES
ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE
NAMED AS RESPONDENT**

The following notice is served on you as part of the Commissioner's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Office of the Commissioner of Railroads (Office) for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. The petition for rehearing must be filed with the Office and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Office within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Office serves its original decision.⁸ The Office must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: April 16, 2016

⁸ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.